



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2010

Ms. Melaney A. Linton
Chief Operating Officer
Planned Parenthood of Houston and Southeast Texas
3601 Fannin Street
Houston, Texas 77004

OR2010-03467A

Dear Ms. Linton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 371112.

This office issued Open Records Letter No. 2010-03467 (2010) on March 10, 2010. In that ruling, we determined that Planned Parenthood of Houston and Southeast Texas ("PPHST") is a governmental body under section 552.003(1)(A)(xii) of the Government Code to the extent it is supported in whole or in part by state funds, and that consequently, to the extent the requested records pertain to the services for which PPHST receives states funds, those records are subject to the Act. Since that date, you have provided new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on March 10, 2010.¹ *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Act).

PPHST received two requests from the same requestor for PPHST's 2007 IRS Form 990 Schedule B, the check register for PPHST's most recent fiscal quarter, and a specified 3D

¹ This ruling also applies to PPHST's requests for rulings assigned ID#s 381406 and 382592.

ultrasound. You state PPHST does not possess the requested ultrasound.² You assert that PPHST is not a governmental body subject to the Act. In the alternative, you claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments. We have also considered comments submitted by the requestor and by an interested third party. See Gov't Code § 552.304(a) (providing that a person may submit comments stating why information should or should not be released).

The Act applies to "governmental bodies" as that term is defined in section 552.003(1)(A) of the Government Code. You assert PPHST is not a governmental body, and, therefore, its records are not subject to the Act. Under the Act, the term "governmental body" includes several enumerated kinds of entities and "the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds[.]" *Id.* § 552.003(1)(A)(xii). The phrase "public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5).

Both the courts and this office have previously considered the scope of the definition of "governmental body" under the Act and its statutory predecessor. In *Kneeland v. National Collegiate Athletic Association*, 850 F.2d 224 (5th Cir. 1988), the United States Court of Appeals for the Fifth Circuit recognized that opinions of this office do not declare private persons or businesses to be "governmental bodies" that are subject to the Act "simply because [the persons or businesses] provide specific goods or services under a contract with a government body." *Kneeland*, 850 F.2d at 228; see Open Records Decision No. 1 (1973). Rather, the *Kneeland* court noted that in interpreting the predecessor to section 552.003 of the Government Code, this office's opinions generally examine the facts of the relationship between the private entity and the governmental body and apply distinct patterns of analysis:

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes "a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser." Tex. Att'y Gen. No. JM-821 (1987), *quoting* ORD-228 (1979). That same opinion informs that "a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a 'governmental body.'"

²We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Kneeland, 850 F.2d at 228. The *Kneeland* court ultimately concluded that the National Collegiate Athletic Association (the "NCAA") and the Southwest Conference (the "SWC"), both of which received public funds, were not "governmental bodies" for purposes of the Act, because both provided specific, measurable services in return for those funds. *Id.* at 230-31.

Both the NCAA and the SWC were associations made up of both private and public universities. The NCAA and the SWC both received dues and other revenues from their member institutions. *Id.* at 226-28. In return for those funds, the NCAA and the SWC provided specific services to their members, such as supporting various NCAA and SWC committees; producing publications, television messages, and statistics; and investigating complaints of violations of NCAA and SWC rules and regulations. *Id.* at 229-31. The *Kneeland* court concluded that although the NCAA and the SWC received public funds from some of their members, neither entity was a "governmental body" for purposes of the Act, because the NCAA and SWC did not receive the funds for their general support. Rather, the NCAA and the SWC provided "specific and gaugeable services" in return for the funds that they received from their member public institutions. *See id.* at 231; *see also A.H. Belo Corp. v. S. Methodist Univ.*, 734 S.W.2d 720 (Tex. App.—Dallas 1987, writ denied) (athletic departments of private-school members of SWC did not receive or spend public funds and thus were not governmental bodies for purposes of Act).

In exploring the scope of the definition of "governmental body" under the Act, this office has distinguished between private entities that receive public funds in return for specific, measurable services and those entities that receive public funds as general support. In Open Records Decision No. 228 (1979), we considered whether the North Texas Commission (the "commission"), a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, was a governmental body. ORD 228 at 1. The commission's contract with the City of Fort Worth obligated the city to pay the commission \$80,000 per year for three years. *Id.* The contract obligated the commission, among other things, to "[c]ontinue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common City's interests and activities." *Id.* at 2. Noting this provision, this office stated that "[e]ven if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the various governmental bodies which have entered into the contract in the position of 'supporting' the operation of the Commission with public funds within the meaning of section 2(1)(F)." *Id.* Accordingly, the commission was determined to be a governmental body for purposes of the Act. *Id.*

In Open Records Decision No. 602 (1992), we addressed the status under the Act of the Dallas Museum of Art (the "DMA"). The DMA was a private, nonprofit corporation that had contracted with the City of Dallas to care for and preserve an art collection owned by the city and to maintain, operate, and manage an art museum. ORD 602 at 1-2. The contract required the city to support the DMA by maintaining the museum building, paying for utility

service, and providing funds for other costs of operating the museum. *Id.* at 2. We noted that an entity that receives public funds is a governmental body under the Act, unless the entity's relationship with the governmental body from which it receives funds imposes "a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser." *Id.* at 4. We found that "the [City of Dallas] is receiving valuable services in exchange for its obligations, but, in our opinion, the very nature of the services the DMA provides to the [City of Dallas] cannot be known, specific, or measurable." *Id.* at 5. Thus, we concluded that the City of Dallas provided general support to the DMA facilities and operation, making the DMA a governmental body to the extent that it received the city's financial support. *Id.* Therefore, the DMA's records that related to programs supported by public funds were subject to the Act. *Id.*

We note that the precise manner of public funding is not the sole dispositive issue in determining whether a particular entity is subject to the Act. *See* Attorney General Opinion JM-821 at 3 (1987). Other aspects of a contract or relationship that involves the transfer of public funds between a private and a public entity must be considered in determining whether the private entity is a "governmental body" under the Act. *Id.* at 4. For example, a contract or relationship that involves public funds, and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity, will bring the private entity within the definition of a "governmental body" under section 552.003(1)(A)(xii) of the Government Code. Structuring a contract that involves public funds to provide a formula to compute a fixed amount of money for a fixed period of time will not automatically prevent a private entity from constituting a "governmental body" under section 552.003(1)(A)(xii). The overall nature of the relationship created by the contract is relevant in determining whether the private entity is so closely associated with the governmental body that the private entity falls within the Act. *Id.*

You inform us PPHST is a nonprofit organization, as defined under 26 U.S.C. § 501(c)(3), that provides certain health care and prevention services to the public. You explain PPHST receives funds from several federal programs to help support the services provided. You contend, and we agree, these federal funds are not "public funds" as defined in section 552.003(5) of the Government Code. Gov't Code § 552.003(5).

You also explain that PPHST receives matching state funds from the Texas Department of State Health Services ("DSHS") mandated by the federal programs from which PPHST receives federal funds. You state the federal programs include Medicaid pursuant to Title XIX of the Social Security Act. Additionally, you state PPHST receives funds for family planning services under Title XX of the Social Security Act, for breast and cervical cancer services pursuant to Title XV of the Public Health Service Act, and for HIV prevention under the Public Health Services Act. *See* 42 U.S.C. §§ 247b(k), 247(c). You state that PPHST formerly received funding for family planning services under Title X of the Public Health Service Act, but that this funding terminated in October 2009. Finally, you state that PPHST

is a sub-recipient of a federal Centers For Disease Control ("CDC") grant to the University of Texas Health Science Center (the "university").

You assert that the reimbursement PPHST receives from the state for services rendered as part of these federal programs is on a fee for service basis. You argue that PPHST contracts with public entities to provide specific, measurable services, and that the financial arrangements between PPHST and DSHS represent typical arms-length transactions. With respect to the CDC grant, you state that PPHST receives CDC funds in a predetermined annual amount for specific consulting and educational services related to the university's program to prevent HIV and sexually transmitted infections in adolescents. You state that although PPHST and its public contractors share the common objective of providing health services to the public, PPHST is not an agent of any public entity. You have provided copies of the contracts under which PPHST receives funding, and schedules for certain reimbursement rates for services rendered under these federal programs. Based on your representations and our review of the submitted documentation, we agree PPHST receives public funds in exchange for specific and measurable services, and not for its general support. Therefore, we find PPHST is not a governmental body under section 552.003(1)(A)(xii) of the Government Code and need not respond to the present request for information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett".

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/sdk

Ref: ID# 371112

c: Requestor

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